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MOTION FILED APR 30 1959 SUPREME COURT U. S.

Nos. 380, 381 and 512

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*

v.

JOHN R. HANSEN and SHIRLEY G. HANSEN

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*

v.

BURL P. GLOVER

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

CLIFTON E. BAIRD and VIOLET L. BAIRD, *Petitioners*

v.

COMMISSIONER OF INTERNAL REVENUE

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION OF VANCE L. WILEY AND LUCILLE J. WILEY FOR LEAVE TO SUPPLEMENT THEIR BRIEF AS AMICI CURIAE

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Vance L. Wiley and Lucille J. Wiley respectfully move the court for leave to supplement their brief as *amici curiae* (if motion to file same is granted) by filing copy of the opinion of the United States Court of Appeals for the Sixth Circuit, dated April 24, 1959, affirming the decision of the Tax Court of the United States in *Vance L. Wiley, et al.* v. *Commissioner*, T. C. Memo. 1957-236. The opinion is in the form of an order.

It is believed that this opinion is significant and should be considered by the Court, in the disposition of the instant cases, in connection with the contention of the Commissioner of Internal Revenue that "finance charges" are a part of the purchase price of an automobile or a trailer. In *Schaeffer* v. *Commissioner*, 258 F(2) 861, C.A. 6th, the court perhaps regarded the finance charges as part of the purchase price because they far exceeded the legal interest rate. In the *Wiley* case, on the other hand, it is undisputed that the finance charges from which the finance reserve was carved constituted true legal interest. Unearned interest to the date of maturity of the note (inadvertently referred to by the court as "prepaid interest") was included in the face amount of each note in addition to the unpaid balance of the purchase price of the trailer.

The *Wiley* decision, accordingly, presents directly this question: Whether a bookkeeping entry crediting the dealer with a part of the unearned interest charges constitutes income when the credit is made, even though the interest is not actually paid until later, and may never be paid if and to the extent that the note is prepaid.

For the convenience of the court the opinion of the Court of Appeals for the Sixth Circuit in the *Wiley* case is annexed hereto.

Respectfully submitted,

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Nos. 13,737-13,738

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 13,737

VANCE L. WILEY, ET AL., *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

No. 13,738

FRANK D. WILEY, ET AL., *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

Order

Filed April 24, 1959
Carl W. Reuss, Clerk

BEFORE: MARTIN, Chief Judge, MILLER, Circuit Judge, and BOYD, District Judge.

In *Schaeffer* v. *Commissioner*, 258 F(2) 861, C.A. 6th, we held that certain "hold-backs" by a finance company from the proceeds of a note executed by the purchaser of an automobile to the automobile dealer and sold by the dealer to the finance company, which "hold-backs" were credited in a dealer's reserve account on the books of the finance company, constituted accrued income to the dealer, who made return of income on the accrual basis, at the time of the transaction. The petitions for review of decisions of the Tax Court, which are now before us,

present the same basic question and are controlled by our ruling in the *Schaeffer* case unless there is some material factual difference between that case and the present ones.

Petitioners urge upon us as a distinguishing feature the following fact. In the present case, the source of the dealer's reserve account set up on the books of the finance company represented an obligation on the part of the purchaser of the automobile-trailer to pay what is termed finance charges, but which were actually prepaid interest to the date of maturity of the note, *in addition* to the unpaid balance of the purchase price. This additional amount was included in the note executed by the purchaser of the trailer to the automobile dealer and sold by the dealer to the finance company. If the note was paid before maturity only the portion of this amount earned at the time of payment, plus a penalty, would be actually paid and the finance company would debit the dealer's reserve account for such portion of the relieved charge. The Tax Court sustained the Commissioner's contention that this dealer's reserve account was accrued income to the dealer at the time it was entered on the books of the finance company. *Wiley* v. *Commissioner*, 26 P-H Memo. T.C., 1957-236.

Petitioners contend that this obligation of the purchaser was a contingent one; that the amount credited to the dealer's reserve account was merely a bookkeeping entry representing an unearned credit subject to a debit if the note was paid before maturity, with the result that the amount so debited was never earned and never received by the dealer; and that such bookkeeping entry could not be treated as accrued income to the dealer at the time the entry was made.

In our opinion, the factual difference is not sufficient to distinguish this case in principle from the ruling in the *Schaeffer* case. *Brown* v. *Helvering*, 291 U.S. 193,

200-201; *Heiner* v. *Melon*, 304 U.S. 271, 276; *Burnet* v. *Sanford & Brooks Co.*, 282 U.S. 359; and cases cited by the Tax Court in its Memorandum Opinion.

IT IS ORDERED that the decisions of the Tax Court be affirmed.

Approved for entry:

s/ SHACKELFORD MILLER, JR.
United State Circuit Judge.